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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,856	11/06/2001	Michael John BEAN	PPD 50341	5612

7590

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EXAMINER

CLARDY, S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 10/01/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/913,856

Applicant(s)  
Bean et al

Examiner  
S. Mark Clardy

Art Unit  
1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Aug 20, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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Claims 1-16 (as amended in the Preliminary Amendment) are pending in this application which has been filed under 35 USC 371 as a national stage application of PCT/GB00/00249, filed January 28, 2000. This application possesses unity of invention under 37 CFR 1.475 (MPEP 1850, 1893.03(d)).

Applicants' claims are drawn to aqueous agrochemical concentrates, herbicidal method of use (claim 15), and method of making the compositions (claim 16), the composition comprising:

- a) an agrochemical electrolyte (claim 5: **glyphosate**, fomesafen, glufosinate, **paraquat**, bentazone, ammonium sulfate)
- b) a water insoluble agrochemical system (claims 6-8: **diuron**, linuron, sulfometuron, chlorsulfuron, metsulfuron, chlorimuron, atrazine, simazine)
- c) an alkylglycoside surfactant
- d) a co-surfactant which forms a structured aqueous system with the alkylglycoside (see claims 2, 4):
  - 1) alcohol (aromatic or aliphatic)
  - 2) alkoxylated alcohol, ester, or alkyl phenol
  - 3) glyceryl alk(en)yl ester
  - 4) sorbitan alk(en)yl ester
- e) optionally, cationic, anionic, amphoteric surfactant (claims 9-10)

Exemplified active agents are in **bold** type, above.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Osborn et al (US 6,010,979) and Finch, Jr. (US 5,078,781), further in view of Albright & Wilson LTD (EP 0 388 239).

Osborn et al teach herbicidal compositions comprising glyphosate, an alkylglycoside surfactant, and an ethoxylated alcohol (col 2, lines 1-22), which may further comprise additional surfactants, humectants, and other surface active agents (columns 5-7), as well as additional herbicidal components such as diuron, linuron, atrazine, simazine, fomesafen, sulfometuron, metsulfuron, chlorimuron, glufosinate, and paraquat, among others (columns 8-9, see groups A, F, J, R, U, X and BB).

Finch teaches herbicidal compositions comprising both a bipyridilium herbicide such as paraquat (col 3, lines 3-5), and a photosynthesis inhibiting herbicide such as atrazine, diuron, or linuron, among others (lines 6-21), in combination with a surfactant such as a polyalkyl glucoside, polyPO-poly-EO block copolymer, alkyl trimethyl ammonium salt, and/or a polyvinyl alcohol surfactant mixture (abstract, column 4).

Albright & Wilson teach that surfactants such as ethoxylated alcohols are useful in forming structured surfactant systems for agrochemical agents (page 5, claims 1, 9).

One of ordinary skill in the art would be motivated to combine these references because Osborn et al and Finch teach the utility of alkyl (poly)glycoside surfactants, among others in dual

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component herbicidal compositions. Albright & Wilson teach the structured surfactant properties of ethoxylated alcohols which were also disclosed in Osborn et al and Finch.

Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined applicants' components in a single herbicidal composition because both Osborn et al and Finch teach the combination of herbicidal components as claimed herein, in combination with a surfactant system comprising alkylglycoside surfactants and additional surface active agents.

No unobvious or unexpected results are noted; no claim is allowed. Note that an evaluation of an invention's nonobviousness must compare the claimed invention with the closest prior art in order to be meaningful; otherwise, there is no basis for relating the claimed invention to the prior art in order to conclude whether or not it is unexpectedly superior and therefore unobvious. In re Wood and Eversole, 202 USPQ 171.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103c and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is (703) 308-4550.



**S. Mark Clardy**  
**Primary Examiner**  
**AU 1616**

September 27, 2002